

1 **John B. Maher**
2 **McKEOWN • VERNIER • PRICE • MAHER**
3 A Joint Venture of McKeown Price LLP
4 and Vernier & Maher LLP
5 **115 Hesler Place**
6 **Ground Floor, Governor Joseph**
7 **Flores Building**
8 **Hagåtña, Guam 96910**
9 **Telephone: (671) 477 7059**
10 **Facsimile: (671) 472-5487**

11 **Attorney for Plaintiff**
12 **KAIOH SUISAN CO., LTD.**

13 **UNITED STATES DISTRICT COURT OF GUAM**

14 **KAIOH SUISAN CO., LTD.**

15 **Plaintiff,**

16 **vs.**

17 **TOM T. KAMIYAMA, YOSHIE M.**
18 **KAMIYAMA and GUAM YTK CORP.,**

19 **Defendants.**

20 **CIVIL CASE NO.**

21 **02-00015**

22 **COMPLAINT**

23 COMES NOW Plaintiff KAIOH SUISAN CO., LTD. ("KAIOH SUISAN") through
24 counsel McKEOWN • VERNIER • PRICE • MAHER, by John B. Maher and complains
25 against the above-named Defendants as follows:

1. This Court has jurisdiction over this matter pursuant to 28 USC §1332.
2. The amount in controversy is at least Two Hundred Thousand Dollars (\$200,000.00).
3. Plaintiff KAIOH SUISAN, at all times relevant herein, is a foreign corporation organized and existing under the laws of Japan.

ORIGINAL

1 4. Upon information and belief, Plaintiff KAIOH SUISAN alleges that
2 Defendant Tom T. Kamiyama, is a resident of Guam.

3 5. Upon information and belief, Plaintiff KAIOH SUISAN alleges that
4 Defendant Yoshie M. Kamiyama, is a resident of Guam.

5 6. Upon information and belief, Plaintiff KAIOH SUISAN alleges that
6 Defendant GUAM YTK CORPORATION ("GUAM YTK") is a corporation
7 organized, existing and doing business under the laws of Guam.
8

9
10 **FIRST CAUSE OF ACTION**

11 **FRAUD**

12 1. Defendants in their personal capacity, and in the capacity as principals of
13 the Defendant GUAM YTK are and have been in the fishing business in
14 Guam over an extensive period.

15 2. On or about October to November 2000, the Defendants, with the intent
16 to deceive and defraud the Plaintiff, represented to Plaintiff KAIOH
17 SUISAN, that the Plaintiff had the opportunity to enter into the fish
18 brokering business for profit, and promised to assist the Plaintiff in
19 establishing a company here on Guam, Guam Kai Oh Co., Ltd. ("Guam
20 Kai Oh").

21 3. On said occasions, the Defendants further represented that Defendants
22 required Two Hundred Thousand Dollars (\$200,000.00) for start-up
23 capital, from which the Defendants would incorporate, organize and
24 operate Guam Kai Oh.
25

- 1 4. The Defendants promised and agreed to act as the Plaintiff's agents for
2 the purpose of incorporating and operating Guam Kai Oh.
- 3 5. In reliance on said representations, on or about November 7, 2000,
4 Plaintiff KAIOH SUISAN issued and transferred the sum of Two Hundred
5 Thousand Dollars (\$200,000.00) via International Seafood Trading Co.,
6 Ltd. ("International Seafood"), to the Defendants, for the paid in capital of
7 Guam Kai Oh.
- 8 6. International Seafood is a foreign corporation, organized and existing
9 under the laws of Washington State.
- 10 7. From the Two Hundred Thousand Dollars (\$200,000.00), the Defendants
11 TOM T. KAMIYAMA and YOSHIE M. KAMIYAMA ("KAMIYAMAS"),
12 borrowed \$70,000 and \$10,000, respectively, for their acquisition of
13 shares in Guam Kai Oh.
- 14 8. The Defendants KAMIYAMAS promised to pay back the Eighty
15 Thousand Dollars (\$80,000.00) once Guam Kai Oh began operating and
16 earning a profit.
- 17 9. All paid-in capital was to be deposited in a Guam Kai Oh bank account.
- 18 10. At the time these representations were made, and at the time the Plaintiff
19 acted in reliance on said representations, the Defendants had the secret
20 intention of not to perform these promises, and each had the intention to
21 misappropriate, convert and use said monies for their own purposes
22 without using any of the monies for the operation for Guam Kai OH.
23
24
25

- 1 11. Said representations made by the Defendants to the Plaintiff were false,
2 fraudulent and deceptive in that they organized and formed Guam Kai
3 Oh, but did not act or even attempt to act to further the business of
4 Guam Kai Oh.
- 5 12. The Plaintiff's agents breached their fiduciary duty to the Plaintiff by
6 falsely representing to the Plaintiff that the Defendants would use all
7 monies sent by the Plaintiff for the incorporation and operation of Guam
8 Kai Oh. Defendants incorporated Guam Kai Oh, without proceeding
9 further to promote or operate Guam Kai Oh; and in fact misappropriated,
10 converted and used all the monies for their own use without the consent
11 and approval of the Plaintiff.
- 12 13. The Defendants did not acquire office space, employees, equipment,
13 supplies, open bank accounts, purchase fish or make other related
14 arrangements for the operation of Guam Kai Oh.
- 15 14. On each and all of said occasions, the Defendants knew that said
16 representations made by them to the Plaintiff were false and fraudulent,
17 that the Defendants never intended to use said monies to run and
18 operate Guam Kai Oh, or to operate Guam Kai Oh to earn a profit, and
19 the Defendants made such false and fraudulent representations for the
20 purpose of inducing the Plaintiff to rely thereon in providing the monies
21 and turning such over to the Defendants.
- 22 15. The Plaintiff reasonably relied on said representations made by the
23 Defendants.
24
25

1 16. By reason of said facts, the Plaintiff has been damaged in the sum of
2 Two Hundred Thousand Dollars (\$200,000.00), and by reason of the
3 malice, oppression, fraud and willful disregard practiced by the
4 Defendants against the Plaintiff, Plaintiff herein is also entitled to have
5 and recover from the Defendants, punitive damages by way of
6 punishment or example in an amount to be determined at trial.
7

8 **SECOND CAUSE OF ACTION**

9 **CONVERSION**

10 17. All prior allegations are realleged and incorporated herein by this
11 reference.

12 18. At all times herein mentioned, the Plaintiff was and still is the owner and
13 entitled to the possession of all monies provided to the Defendants for
14 the purpose of organizing, incorporating and operating Guam Kai Oh.

15 19. On or about November 2000, the Defendants obtained the Two Hundred
16 Thousand Dollars (\$200,000.00) from GUAM YTK and converted such to
17 their own use, without using said monies to conduct the operations of
18 Guam Kai Oh, and without the consent of the Plaintiff.
19

20 20. As the proximate result of the Defendants' conversion, the Plaintiff lost
21 \$200,000 and suffered other damages in an amount to be proven at trial,
22 and Plaintiff is also entitled to have and recover from the Defendants,
23 punitive damages by way of punishment or example in an amount to be
24 determined at trial.
25

1 21. Further, after knowledge and notice of the Plaintiff's request to return
2 said monies, Defendants failed and refused, and continues to fail and
3 refuse to return said monies.

4 22. The aforementioned acts of the Defendants were willful, wanton,
5 malicious and oppressive, which were undertaken with the intent to
6 defraud and oppress the Plaintiff, and justifies their awarding of
7 exemplary and punitive damages in an amount to be proven at trial.
8

9 **REQUEST FOR RELIEF**

10 WHEREFORE, Plaintiff KAIOH SUISAN CO., LTD. respectfully requests this
11 Court for Judgment against all Defendants, jointly and severally, as follows:

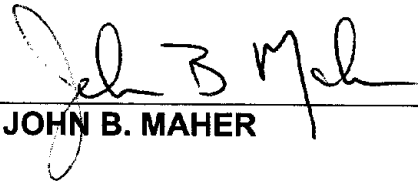
- 12 1. For the value of the monies converted in the sum of Two Hundred
13 Thousand Dollars (\$200,000.00) from the Defendants;
14
15 2. For damages for time and money expended, to be proven at trial;
16
17 3. For punitive and exemplary damages to be proven at trial;
18
19 4. For and order declaring that the Defendant holds any and all properties,
20 including leasehold interests, derived from the conversions and use of
21 the Plaintiff's monies whether real or personal, in trust for the Plaintiff;
22
23 5. For an order compelling the Defendants to convey to the Plaintiff all
24 interest in real or property, including leasehold interests, that was
25 acquired from the conversion and use of the Plaintiff's monies;
26
27 6. For an order granting possession of the properties, including leasehold
28 interests, derived from the conversion and use of the Plaintiff's monies,
29 to the Plaintiff.

- 1 7. For an accounting of all monies owing to the Plaintiff;
2 8. Attorney's fees and costs of suit; and,
3 9. For such other relief as the Court may deem just and proper.

4 Dated this 23rd day of May, 2002.

5 **McKEOWN • VERNIER • PRICE • MAHER**
6 Attorney for Plaintiff
7 **KAIOH SUISAN CO., LTD.**

8
9 By: _____


JOHN B. MAHER

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12 CORP\Pleadings\Complaint 031802.doc

United States District Court

DISTRICT OF

Kaioh Suisan Co., Ltd.

Plaintiff,

V.

SUMMONS IN A CIVIL CASE

CASE NUMBER: 02-00015

Tom T. Kamiyama, Yoshie M.
M. Kamiyama and Guam YTK Corporation,

Defendants.

TO: (Name and address of defendant)

Guam YTK Corporation
Hotel Wharf, Piti, Guam**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)John B. Maher, Esq.
McKEOWN VERNIER PRICE MAHER
115 Hesler Place
Ground Flr., Gov. Joseph Flores Bldg.
Hagatna, Guam 969120

ACKNOWLEDGED RECEIPT

By: MAH
Date: 05.23.02

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Mary L. M. Moran

CLERK

MAY 23 2002

DATE

/s/ Walter M. Tenorio

(BY) DEPUTY CLERK

United States District Court

DISTRICT OF

Kaioh Suisan Co., Ltd.

Plaintiff,

v.

SUMMONS IN A CIVIL CASE

CASE NUMBER: 02-00015

Tom T. Kamiyama, Yoshie M.
M. Kamiyama and Guam YTK Corporation,
JA

Defendants.

TO: (Name and address of defendant)

TOM T. KAMIYAMA
Employed at Guam YTK Corporation
Hotel Wharf, Piti, Guam

ACKNOWLEDGED RECEIPT

By: YMA
Date: 05.23.02

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

John B. Maher, Esq.
McKEOWN VERNIER PRICE MAHER
115 Hesler Place
Ground Flr., Gov. Joseph Flores Bldg.
Hagatna, Guam 969120

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DISTRICT OF

Kaioh Suisan Co., Ltd.

Plaintiff,

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SUMMONS IN A CIVIL CASE

CASE NUMBER: 02-00015

Tom T. Kamiyama, Yoshie M.
M. Kamiyama and Guam YTK Corporation,



Defendants.

TO: (Name and address of defendant)

YOSHIE M. KAMIYAMA
Employed at Guam YTK Corporation
Hotel Wharf, Piti, Guam

ACKNOWLEDGED RECEIPT

By: 

Date: 05 23-02

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

John B. Maher, Esq.
McKEOWN VERNIER PRICE MAHER
115 Hesler Place
Ground Flr., Gov. Joseph Flores Bldg.
Hagatna, Guam 969120

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Mary L. M. Moran

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MAY 23 2002

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/s/ Walter M. Tenorio

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